

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

RICHARD DASCHBACH  
*individually and on behalf of all  
others similarly situated,*

Plaintiff,

v.

ROCKET MORTGAGE, LLC,

Defendant.

**CASE NO. 1:22-cv-00346-JL**

November 29, 2022

**DECLARATION OF MITCHELL VINER**

I, Mitchell Viner, hereby declare and state as follows:

1. I am General Counsel of LMB OpCo, LLC, which is the parent company of LMB Mortgage Services, Inc. d/b/a LowerMyBills.com (“LMB”). I have held this position since October 22, 2012.

2. This Declaration is based upon my personal knowledge, my experience, knowledge and familiarity with LMB’s historic and current records and systems of records that are maintained in the ordinary course of LMB’s business, or information provided to me by other employees at LMB working under my direction and supervision. If called as a witness, I could and would testify competently as to the truth of the matters set forth herein.

3. LMB operates a free online financial resource center for consumers, and also offers a free referral service for consumers seeking home mortgage and refinance loans. As part of its free referral service for home mortgage financing, LMB identifies consumers who have indicated they are interested in or inquired about home mortgage or refinance loan options through LMB’s

websites, including Refinance.enhancedrefinow.com. LMB will then match consumers to one or more mortgage loan providers, such as Rocket Mortgage, LLC (“Rocket Mortgage”). Since prior to September 2021, LMB and Rocket Mortgage (f/k/a Quicken Loans, LLC) have been affiliated companies, and shared the same parent company, RKT Holdings, LLC.

4. When a consumer visits the Refinance.enhancedrefinow.com website, the consumer voluntarily enters various pieces of personal information, including his or her name, property address, phone number, email address, estimated home value, current interest rate, and amount of debt. The consumer is then given the option to consent to LMB sharing his or her contact information with LMB partners like Rocket Mortgage, and to consent to those partners contacting the consumer by phone or text message.

5. LMB provides Rocket Mortgage and its other partners with a home financing consumer’s information only if the consumer, among other things, expresses his or her agreement to LMB’s Terms of Use and provides his or her written consent to calls from Rocket Mortgage and other mortgage loan providers by pressing the submission button on the Refinance.enhancedrefinow.com website.

6. If these (and other) requirements are met, LMB will then match the consumer to one or more mortgage loan providers that partner with LMB and provide the partner(s) with the information the consumer submitted at Refinance.enhancedrefinow.com. The consumer is informed before submitting his or her phone number at Refinance.enhancedrefinow.com that LMB’s service is a referral service, and that the phone number and other information the consumer provides at Refinance.enhancedrefinow.com will be shared with LMB’s affiliate Rocket Mortgage or other mortgage loan providers if the consumer consents to LMB doing so.

7. I have reviewed the Complaint in this case that Plaintiff Richard Daschbach has filed against Rocket Mortgage. In the Complaint, Plaintiff alleges that he was contacted on his cellular telephone number ending in 7110 by Rocket Mortgage.

8. I have reviewed LMB company records maintained in the ordinary course of business relating to the phone number. Those business records show that a consumer with the name “Richard Daschbach” and a telephone number matching the number identified in the Complaint navigated to and visited [Refinance.enhancedrefinow.com](https://Refinance.enhancedrefinow.com) on September 13, 2021 and December 20, 2021. These business records further show that Mr. Daschbach entered the following information on the [Refinance.enhancedrefinow.com](https://Refinance.enhancedrefinow.com) website during each visit:

- a. Name: Richard Daschbach
- b. Phone Number: 603-777-7110
- c. Property Address: 4 Harvard St
- d. State: New Hampshire
- e. Email Address: [rjdnh1936@gmail.com](mailto:rjdnh1936@gmail.com)

During his first visit, he provided the city of “Brentwood”, and during his second visit he provided the city of “Exeter.” During each of his two visits to [Refinance.enhancedrefinow.com.com](https://Refinance.enhancedrefinow.com.com), Mr. Daschbach also was presented with LMB’s disclosures and hyperlinks to LMB’s Terms of Use.

9. From my position as General Counsel of LMB, I am familiar with and have personal knowledge concerning the form, content and function of the [Refinance.enhancedrefinow.com.com](https://Refinance.enhancedrefinow.com.com) website at the time of Mr. Daschbach’s visits in September 2021 and December 2021, including the LMB disclosure language contained on the website at those times and the LMB Terms of Use featured on and accessible through hyperlinks available on the website at those times.

10. To prepare this Declaration, I reviewed LMB's business records kept in the ordinary course of business regarding how Refinance.enhancedrefinow.com existed and appeared on September 13, 2021 and December 20, 2021 and the information Mr. Daschbach provided during his visit to the website on those dates. In addition, I also reviewed screenshots that fairly and accurately depict what would have been presented, disclosed or available to Plaintiff when he navigated to the website on the two dates: September 13, 2021 and December 20, 2021. LMB does not itself capture or retain in-session screenshots for individual consumer interactions. However, LMB's internal database maintains the data that a consumer enters during the information entry process on its website.


11. As detailed below, during his September 13, 2021 visit, LMB's business records demonstrate that Mr. Daschbach clicked a submission button labeled "See my results!" confirming that he consented and agreed to LMB's Terms of Use. And by clicking the submission button, Mr. Daschbach also expressly agreed to be contacted by LMB or a member of its Provider Network, including Quicken Loans (now known as "Rocket Mortgage"), "even if [he or his number was] on a corporate, state or national Do Not call Registry." Further, Mr. Daschbach expressly agreed that Quicken Loans n/k/a Rocket Mortgage could share his "personal data and contact information with third parties."

12. Attached as **Exhibit 1** to this Declaration are true and correct copies of screenshots reflecting an excerpt of the website flow and information entry process that would have been presented to a consumer who (like Daschbach) navigated to the Refinance.enhancedrefinow.com website on September 13, 2021. Mr. Daschbach visited Refinance.enhancedrefinow.com on an iPad, and Exhibit 1 hereto displays pages of the website through multiple screenshots.


13. All consumers, including Daschbach, who visited Refinance.enhancedrefinow.com in September 2021 were presented with screens containing preliminary questions requesting information such as property address and email address. After responding to those preliminary questions, consumers advance to a fifteenth page with additional questions requesting specific information such as the consumer's name and telephone number. Ex. 1 at 5-6.

14. After inputting responses to these questions, including his email address, Mr. Daschbach clicked a submission button labeled "See my results!" Ex. 1 at 6. The text immediately below this button expressly informed Mr. Daschbach that: "By clicking the button above, you express your understanding and consent, electronically via E-Sign" to LMB's Terms of Use and Privacy Policy.


15. As shown in Exhibit 1 hereto and in the screenshot below, the words "Terms of Use" and "Privacy Policy" on this page were underlined and appeared in blue text, contrasted from the surrounding language that appeared in gray text without underlining. *Id.* "Terms of Use" and "Privacy Policy" appeared as hyperlinks on that page. *Id.* Clicking the words "Terms of Use" would take the consumer to LMB's Terms of Use, which included, among other things a mandatory arbitration provision and a list of LMB's clients from whom consumers were consenting to be contacted including Quicken Loans (n/k/a Rocket Mortgage). *Id.*

Phone 

Enter Phone Number

Secondary Phone Number (Optional) 

Enter Secondary Phone Number

**See my results!** 

Back

By clicking the button above, you express your understanding and consent, electronically via E-sign, to the following:

1. To be matched with, and contacted by, up to 5 participants in the [LMB Provider Network](#) about mortgage and financial services products, and consent (not required as a condition to purchase a good/service) for us and them to contact you for marketing purposes (including through the use of an automatic telephone dialing system, artificial or prerecorded means) via telephone or text at the phone number provided above (including SMS and MMS), and email, even if you are on a corporate, state or national Do Not call Registry. You may revoke your consent at any time. You agree that LMB, Core Digital Media, and [Quicken Loans](#) can share your personal data and contact information with third parties, such as mortgage partners, partner companies, and other affiliates, and that these parties may use your personal data and contact information for marketing and analytics, and to make your experience easier. As an alternative, you may contact us by email at [customer@coredigital.com](mailto:customer@coredigital.com).
2. To the LMB Lending [Terms of Use](#), [Privacy Policy](#), and Consent to Doing Business Electronically.
3. And that as a condition of such consent, you are providing express Written Instructions (as defined under applicable law(s)) to LMB to utilize your information in order to reference your consumer credit report for the purpose of validating your self-reported information. Matched Providers will contact you directly to discuss their financial services and products, and to gather additional information, in order to best service your request for information and products.
4. Additionally, if selected above, you consent to be matched to up to an additional 3 providers about [solar services](#), [home improvement services](#), [home insurance services](#), and [realtor services](#), and consent (not required as a condition to purchase a good/service) for us and them to contact you for marketing purposes (including through the use of an automatic telephone dialing system, artificial or prerecorded means) via telephone at the phone number provided above (including SMS and MMS), and email, even if you are on a corporate, state or national Do Not call Registry. You may revoke your consent at any time. As an alternative, you may contact us by email at [customer@coredigital.com](mailto:customer@coredigital.com).

16. After clicking “See my results!”, Plaintiff was shown a page informing him that he had been matched with Quicken Loans (now known as Rocket Mortgage).

17. Mr. Daschbach also visited the [Refinance.enhancedrefinow.com](https://refinance.enhancedrefinow.com) website on December 20, 2021. During his December 20, 2021 visit, LMB’s business records demonstrate that Mr. Daschbach clicked a submission button labeled “See my results!” confirming that he consented and agreed to LMB’s Terms of Use. And by clicking the submission button, Mr. Daschbach also expressly agreed to be contacted by LMB or a member of its Provider Network,

including Rocket Mortgage, “even if [he or his number was] on a corporate, state or national Do Not call Registry.” Further, Mr. Daschbach expressly agreed that Rocket Mortgage could share his “personal data and contact information with third parties.”


18. Attached as **Exhibit 2** to this Declaration are true and correct copies of screenshots reflecting an excerpt of the website flow and information entry process that would have been presented to a consumer who (like Daschbach) navigated to the Refinance.enhancedrefinow.com website on December 20, 2021. Mr. Daschbach visited Refinance.enhancedrefinow.com on an iPad, and Exhibit 2 hereto displays pages of the website through multiple screenshots.

19. All consumers, including Daschbach, who visited Refinance.enhancedrefinow.com in December 2021 were presented with screens containing preliminary questions requesting information such as property address and email address. After responding to those preliminary questions, consumers advance to a fifteenth page with additional questions requesting specific information such as the consumer’s name and telephone number. Ex. 2 at 5-6.


20. After inputting responses to these questions, including his email address, Mr. Daschbach clicked a submission button labeled “See my results!” Ex. 2 at 6. The text immediately below this button expressly informed Mr. Daschbach that: “By clicking the button above, you express your understanding and consent, electronically via E-Sign” to LMB’s Terms of Use and Privacy Policy.

21. As shown in Exhibit 2 hereto and in the screenshot below, the words “Terms of Use” and “Privacy Policy” on this page were underlined and appeared in blue text, contrasted from the surrounding language that appeared in gray text without underlining. *Id.* “Terms of Use” and “Privacy Policy” appeared as hyperlinks on that page. *Id.* Clicking the words “Terms of Use” would take the consumer to LMB’s Terms of Use, which included, among other things a

mandatory arbitration provision and a list of LMB's clients from whom consumers were consenting to be contacted including Rocket Mortgage. *Id.*

Phone 

Enter Phone Number

Secondary Phone Number (Optional) 

Enter Secondary Phone Number

Preferred Method of Communication?

☐ Online ☐ Phone ☐ No preference

**See my results! >**

Back

By clicking the button above, you express your understanding and consent, electronically via E-sign, to the following:

1. To be matched with, and contacted by, up to 5 participants in the [LMB Provider Network](#) about mortgage and financial services products, and consent (not required as a condition to purchase a good/service) for us and them to contact you for marketing purposes (including through the use of an automatic telephone dialing system, artificial or prerecorded means) via telephone or text at the phone number provided above (including SMS and MMS), and email, even if you are on a corporate, state or national Do Not call Registry. You may revoke your consent at any time. You agree that LMB, Core Digital Media, and [Rocket Mortgage](#) can share your personal data and contact information with third parties, such as mortgage partners, partner companies, and other affiliates, and that these parties may use your personal data and contact information for marketing and analytics, and to make your experience easier. As an alternative, you may contact us by email at [customer@coredigital.com](mailto:customer@coredigital.com).
2. To the LMB Lending [Terms of Use](#), [Privacy Policy](#), and Consent to Doing Business Electronically.
3. And that as a condition of such consent, you are providing express Written Instructions (as defined under applicable law(s)) to LMB to utilize your information in order to reference your consumer credit report for the purpose of validating your self-reported information. Matched Providers will contact you directly to discuss their financial services and products, and to gather additional information, in order to best service your request for information and products.
4. Additionally, if selected above, you consent to be matched to up to an additional 3 providers about [solar services](#), [home improvement services](#), [home insurance services](#), and [realtor services](#), and consent (not required as a condition to purchase a good/service) for us and them to contact you for marketing purposes (including through the use of an automatic telephone dialing system, artificial or prerecorded means) via telephone at the phone number provided above (including SMS and MMS), and email, even if you are on a corporate, state or national Do Not call Registry. You may revoke your consent at any time. As an alternative, you may contact us by email at [customer@coredigital.com](mailto:customer@coredigital.com).

22. After clicking “See my results!”, Plaintiff was shown a page informing him that he had been matched with Rocket Mortgage.



23. Attached as **Exhibit 3** is a true and correct video that was taken on October 24, 2022, at my direction, of the consumer experience on the current Refinance.enhancedrefinow.com website using an iPad. Although the Refinance.enhancedrefinow.com website has had minor changes since September 2021, the appearance of the text on the current website is representative of its appearance in September 2021 and December 2021 when Plaintiff used the website. The video also shows the appearance of the website and text as it would have been viewed by Plaintiff on his iPad browser during each of his two visits to the site, and demonstrates that the Terms of Use hyperlinks were clearly presented in blue, underlined font and in close proximity to the button Plaintiff clicked.

24. Based on my review of LMB's business records that are kept in the ordinary course of its business and available to me in the course of my duties at LMB, I understand Mr. Daschbach accessed the Refinance.enhancedrefinow.com website from an iPad on September 13, 2021 and again from an iPad on December 20, 2021.


25. Attached as **Exhibit 4** to this Declaration is a true and correct copy of LMB's Terms of Use that were used in September 2021 and December 2021. A consumer who clicked on a "Terms of Use" hyperlink at the Refinance.enhancedrefinow.com website in September 2021 and December 2021 would have been directed to a webpage containing these Terms of Use.

26. As shown in **Exhibit 4** (on the first page at ¶ 2), LMB's Terms of Use had a mandatory arbitration provision, which required that all disputes with LMB or its parents, affiliates, subsidiaries or related companies shall be resolved through binding arbitration.

27. Attached as **Exhibit 5** to this Declaration is a true and correct copy of LMB's Provider Network that was displayed to consumers in September 2021 and December 2021.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 26, 2022



Mitchell Viner